

City of Des Moines/Des Moines Police Bargaining Unit

2004-2005
CEO 203
SECTOR 3

In the Matter of Interest Arbitration

Between

THE CITY OF DES MOINES ("City")

and

THE DES MOINES POLICE BARGAINING
UNIT ASSOCIATION ("Union")

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Opinion and Award of:

Lon Moeller
Arbitrator

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Preliminary Statement

This case involves an interest arbitration proceeding arising under the Iowa Public Employment Relations Act, Iowa Code Chapter 20. The interest arbitration hearing was held on February 21, 2005 at the City's Police Academy, located at 433 E. Army Post Road in Des Moines, Iowa. The City and Union appeared through their designated representatives and offered evidence through exhibits and the testimony of their witnesses. The parties stipulated that the impasse items before the Arbitrator included wages and insurance for the 2005-06 contract year and noted that two other contract provisions have been preliminarily found by PERB to be permissive subjects of bargaining.

Appearances

For the City:

Frank Harty, Attorney and Spokesperson
Thomas G. Turner, Human Resources Director
Carol J. Moser, Assistant City Attorney
David P. Lind, David P. Lind & Associates
Allen McKinley, Research and Budget Officer

For the Union:

Mark T. Hedberg, Attorney and Spokesperson
John Meeker, Sergeant
Rick Host, Lieutenant
Dave Murillo, Sergeant
David Viggers, Senior Police Officer
Stew Barnes, Union President
Wayne Newkirk, Emeritus Professor/Labor Economist
Stew Drake, Chief Steward

I. Position of the City

Des Moines police officers “were traditionally never the highest paid police officers in the state” (City Brief, p. 3); however, the City took it upon itself (motivated by a 1999 wage survey) to raise the wages of its police officers and fire fighters “at or near the top” in Iowa. During the last five contract years, the police bargaining unit has received wage increases “far above market average” – 5.5% in 2000, 4% in 2001, 4.5% in 2002, 5% in 2003 and 6% in 2004 (City Brief, p. 3; City Exhibit 1). The City’s proposed 2% across-the-board wage increase for the 2005-06 contract year keeps the police as the “highest paid in the state” relative to the comparables of Cedar Rapids, Davenport, Sioux City and Waterloo (City Exhibits 3-5).¹ A 2% wage increase is also particularly reasonable given the City’s “tenuous financial condition” (City Brief, p. 4).

Next, the City emphasizes that the “true point of contention” in this case is the insurance issue (City Brief, p. 1). The City is proposing that the Police bargaining unit shift from its traditional health insurance plan to the health insurance plan in place for the City’s non-union staff, the Library bargaining units, AFSCME-represented bargaining unit and the Fire Fighters (the “SPM plan”) and that police bargaining unit employees covered by the family health insurance plan contribute 5% of the difference between the premium cost of the single and family plans – an estimated sum of \$28.52 per month (City Exhibits 7-8).

Without question, rising health insurance costs pose a significant problem for Iowa employers (City Exhibits 9 and 11). City witness and insurance expert David Lind testified that trends in both the private and public sector in Iowa are for employees to share in the premium cost of their health insurance coverage (See also City Exhibit 12). Fact-Finder Marvin Hill acknowledged that the changes called for by the City’s insurance proposal were “modest, fundamental and almost uniform in other jurisdictions” (City Exhibit 14, p. 13).² Of the external comparables, only Sioux City does not require employee contribution for health insurance coverage (City Exhibit 7).³

As a final matter, the City asks “that two clearly permissive provisions be removed from the collective bargaining agreement” (City Brief, p. 13). The record retention language of Article XI – **Performance Appraisals**, Section D - **Restrictions** (Union Exhibit 11, p. 9) does not relate to “evaluation procedures” within the meaning of Iowa Code §20.9. Likewise, the “work rule” language of Article VI – **Work Rules** (Union Exhibit 11, pp. 3-4) falls within the employer’s statutory prerogative to direct the work of its employees. Because PERB has preliminarily determined that Article XI, Section D and Article VI are permissive in nature (City Exhibits 18-19), those two provisions should not be included in the 2005-06 agreement.

¹ City Human Resources Director Tom Turner testified that Davenport police recently ratified a change to their previously agreed-upon 3% wage increase, agreeing to a 2.25% wage increase in exchange for a 2% increase in the city’s deferred compensation match.

² The Fire Fighters reached a voluntary three-year agreement with the City after Fact-Finder Hill’s report was issued in this case (City Exhibits 15-17).

³ The City notes that Sioux City police traded their employee premium contribution during negotiations for a new “three-tier drug plan.”

In conclusion, the City maintains that its final offer on the wages and insurance impasse items and on Article VI and Article XI, Section D is the most reasonable and should be selected by the Arbitrator.

II. Position of the Union

The Union accepted Fact-Finder Hill's recommendation of a 3% across-the-board wage increase for the 2005-06 contract year and "current contract language" for everything else (Union Exhibit 8). It emphasizes that a 3% wage increase reflects the external settlement pattern for the 2005-06 contract year established by Bettendorf, Davenport and Waterloo (over 3%), which the Union maintains is the appropriate group of external comparables because of the City's commitment to making Des Moines police officers the highest paid in Iowa (Union Brief, pp. 3-4; Union Exhibit 41, p. 49). Statewide police wage settlements for the 2005-06 contract year are in the range of 3.2% (Union Exhibit 41, pp. 47-48).

Next, the Union points out that the internal wage settlement pattern likewise supports a 3% across-the-board wage increase. With the exception of the AFSCME bargaining unit, every other City bargaining unit that has settled for the 2005-06 contract year has settled for 3% or higher on wages. Significantly, CIPEC negotiated a 3% wage increase with the City for 2005-06 with no changes in health insurance and a fact-finder has recommended a 3% wage increase for the MEA bargaining unit with no change in health insurance (Union Exhibit 25, p. 8). In short, the Union contends that the City's proposed 2.0% across-the-board wage increase is "well under the average of both external and internal comparables" (Union Brief, p. 6) and will cause the wages of this bargaining unit to fall short of the applicable cost of living figures (Union Exhibit 41, pp. 1, 6).⁴

The Union emphasizes that the current health insurance plan has been long considered an important benefit for this bargaining unit. Historically, the Union has given up or traded proposals with the City over the years – shift differential, vision insurance, enhanced dental coverage, etc. – in order to maintain its traditional health insurance plan. According to the Union, "[a]ny attempt to change this bargain unilaterally undercuts this history and rolls back over a decade of negotiations" (Union Brief, p. 6). Indeed, Fact-Finder Hill made this same point in his report: "[a]ccordingly, I am reluctant to recommend a change when one party 'paid for' the current allocation in prior bargaining" (Union Exhibit 7, p. 12).

Citing PERB's regulations (Iowa Administrative Code Section 6.3(2)), the Union additionally argues that the Arbitrator should issue a ruling on the records retention and work rule provisions (Union Brief, pp. 6-7) even though PERB has issued preliminary rulings (Union Exhibits 37 and 38). It points out that these two contract provisions (Article VI and Article XI, Section D) have been in the parties' collective bargaining agreements for "well over 10 years" (See Union Exhibits 11-17).

⁴ The Union claims that "the continuing financial stability of the City" (Union Exhibit 41, p. 2) is demonstrated by the City's operating and recommended budgets. It also notes that additional revenues (Union Exhibits 33-35) not specifically accounted for in the City's FY 2005 budget provides the City with "a margin of flexibility" (Union Exhibit 41, p. 4).

In summary, the Union maintains that the Fact-Finder's recommendations on the wages, insurance and contract provisions at issue in this case should be selected by the Arbitrator.

III. Discussion and Analysis

The Arbitrator is required to consider the factors of Iowa Code §20.22(9) to determine which final offer (or Fact-Finder recommendation) on each impasse item is the more reasonable. In this case, the parties' final offers involve two impasse items – wages and insurance – and two other contract issues (record retention and work rules) that have been preliminarily found by PERB to involve permissive subjects of bargaining. The Union and the City have generally based their arguments on the following factors of Section 20.22(9):

- *Past collective bargaining contracts between the parties including the bargaining that led up to such contracts;*
- *Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved; and*
- *The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.*

A. Wages

In an August 11, 1999 memorandum to the Mayor and City Council, Des Moines City Manager Eric Anderson recommended that “[t]he City should look to compensate our police officers and firefighters at the highest levels in the State, which is the market from which they are drawn” (Union Exhibit 32, p. 2). The City took steps – through collective bargaining – to raise wage rates to the point where Des Moines police officers caught up with Davenport and other eastern Iowa police departments and became the highest paid police officers in Iowa. Des Moines is now at or near the top at many of the comparable wage benchmarks. The question, however, is whether the City has made the case for what appears to be a “below average” 2% across-the-board wage increase for the 2005-06 contract year. Based on this record, the answer to that question is “no.”

Both parties suggest that Davenport and Waterloo are comparable to Des Moines. All of the City's proposed external comparables have reached agreements for the 2005-06 contract year: Cedar Rapids (2.70%), Davenport (2.25%), Sioux City (2.25% - 7/1/05 and 2.25% - 1/1/06) and Waterloo (3.50%) (City Exhibit 2). The average wage settlement of the City's proposed comparables is a shade under 3%.

Bettendorf is one of the “eastern Iowa cities” (City Brief, p. 3) that paid its police and fire fighters more than Des Moines police officers and fire fighters. The City made wage comparisons with Davenport and Bettendorf police in its 2000 hearing with Fact-Finder Perry (Union Exhibit 19, pp. 3-4) and in its 2000 interest arbitration case before Arbitrator Pegnetter (Union Exhibit 18, p. 2). Since the City changed its focus in 1999 to look at the highest paid

police bargaining units in Iowa, Bettendorf should be viewed as a comparable along with Cedar Rapids, Davenport, Sioux City and Waterloo.

Adding Bettendorf's 3.5% 2005-06 wage settlement to the City's external comparable group puts the external settlement average a shade over 3%. A 3% wage increase – as recommended by Fact-Finder Hill and accepted by the Union – is thus right on the comparable average.

Five of the City's seven bargaining units have settled for the 2005-06 contract year: CIPEC, Fire Fighters, Library Clerks, Library Professionals and AFSCME (City Exhibit 1). The average wage settlement among this group of internal comparables is 2.75%. City Exhibit 1 also shows that prior to the 2000-05 collective bargaining agreement, the City and Union negotiated a series of 3% across-the-board wage increases.

While Iowa municipalities are forced these days to "do more with less" (City Exhibit 10, p. 1), the City does not claim an "inability to pay" in this case (City Brief, p. 4) nor is there any evidence that City services will be adversely affected by a 3% across-the-board wage increase for the Police bargaining unit. The Fact-Finder's recommended 3% across-the-board wage increase is supported by the external and internal settlement pattern for the 2005-06 contract year and, accordingly, is more reasonable than the City's proposed 2% across-the-board wage increase.

B. Insurance

Mr. Turner testified that the City's final offer on insurance consists of "two separate proposals": (1) switching this bargaining unit from its traditional health insurance plan to the SPM plan; and (2) requiring employee contribution for 5% of the difference in premium cost between the single and family health and dental insurance plans. The SPM plan has higher out-of-pocket maximums, co-pay and deductible amounts than the traditional plan (City Exhibit 8; Union Exhibits 27-29). This bargaining unit is not currently required under Article XXIX – **Insurance** (Union Exhibit 11, p. 26) to make any premium contribution for their single or family insurance coverage. The Union suggests that when the employee contribution aspect of the City's insurance final offer is taken into account, the "actual benefit" of the City's proposed 2% across-the-board wage increase is 1.53% (Union Exhibit 41, p. 45).

The City is seeking, as noted by the Fact-Finder, a "breakthrough change" (City Exhibit 14, pp. 11-12; Union Exhibit 7, pp. 11-12) to the insurance *status quo*. Rising premium costs and the fact that other City bargaining units have made changes to their insurance plans and agreed to employee premium contributions provide the City with a reasonable justification to ask for this "breakthrough change." The Police bargaining unit, on the other hand, has consistently negotiated with the City with an eye toward maintaining the insurance *status quo*.

The reasonableness of the City's final offer must be viewed in light of the comparables. Bettendorf and Sioux City (Union Exhibit 41, p. 14; City Exhibit 7), for example, do not require employee contributions for health insurance. Only one of the comparables (Davenport) bases its employee health insurance premium contribution on a percentage – as the City has proposed in

its final offer – and even then the employee premium contribution is subject to a dollar cap (\$8 for single and \$25 for family) (Union Exhibit 22, p. 10). The dollar amount of the family plan health insurance contribution called for by the City's final offer ("five percent (5%) of the difference between the family and single premium" or an estimated \$28.52 per month) would put the City at the high end of the comparable group (City Exhibit 7). It is not clear, based on the parties' exhibits, the full extent to which the comparables require employee premium contribution for dental insurance. The increased deductibles and out-of-pocket maximums of the SPM plan would, compared to Bettendorf, Cedar Rapids, Davenport, Sioux City and Waterloo, place the City at the top of the comparables (City Exhibit 7; Union Exhibits 22-24).

Comparisons with the City's other bargaining units seemingly favor the City's insurance final offer. Four bargaining units (AFSCME, Library Clerks, Library Professionals and now the Fire Fighters) have agreed to the SPM insurance plan. The Library Clerks and Library Professionals have agreed to the same employee contribution proposed here by the City. AFSCME agreed to a 1.5% wage increase for the 2005-06 contract year in exchange for not making any insurance premium contributions. The CIPEC-represented bargaining unit has the traditional health insurance plan and does not make any insurance premium contributions. Fact-Finder Behrens rejected the City's health insurance proposal to the MEA bargaining unit – changing from the traditional plan to the SPM health insurance plan and employee contribution of 5% of the cost difference between the single and family insurance plans – for the 2005-06 contract year (Union Exhibit 25).

Because the City has put the fire fighters and police in the same boat in terms of its efforts to make Des Moines fire fighters and police the highest paid in Iowa, comparisons between the Fire Fighters' recent settlement and the City's final offer takes on added importance. The Fire Fighters agreed to 3.25% across-the-board increases in each of the 2005-06, 2006-07 and 2007-08 contract years. They agreed to change over to the SPM health insurance plan from the traditional plan and to a \$15 per month employee contribution for the family plan coverage (as of July 1, 2006), a \$17 per month employee contribution for family plan coverage (as of July 1, 2007) and a \$1 per month employee contribution for family dental insurance as of July 1, 2006. The City agreed to increase the annual dental insurance maximum from \$750 to \$1,000 on July 1, 2006 and to implement a Kelly Day work schedule (changing from 56 hours per week to 53 hours per week) to bring the Fire Fighters bargaining unit in line with fire fighters in Cedar Rapids, Davenport and Waterloo (City Exhibit 17, p. 2; Union Exhibit 26, p. 2).

While the Fire Fighters' settlement supports the notion of employee health and dental insurance premium contributions, that settlement occurred because of important trade offs by the City – a switch to a Kelly Day work schedule, an "above-average" 3.25% across-the-board wage increase in each of the three contract years and an increased dental insurance maximum – a benefit that had "not been increased for at least 20 years" (City Exhibit 17, p. 2; Union Exhibit 26, p. 2). More importantly, the negotiated employee health insurance contributions don't start until the second year of the agreement and reflect flat dollar amounts. By contrast, the percentage-based premium contribution of the City's final offer will automatically go up as the City's premium costs increase and would go into effect July 1, 2005. In terms of dental insurance, the Fire Fighters will make monthly contributions of \$1, compared to the City's

proposed family plan contribution of "five percent (5%) of the difference between the family and single premium" (Union Exhibit 10, p. 4).

To summarize, external comparisons do not provide the type of consistent support generally expected in interest arbitration to support the City's proposed change to the insurance *status quo*. Internal comparisons support switching this bargaining unit from the traditional plan to the SPM plan; however, what tips the balance in favor of the Fact-Finder's recommendation (as accepted by the Union) on the insurance issue is the City's proposed employee premium contribution, which (1) goes beyond what the Fire Fighters have agreed to through the give-and-take of collective bargaining and (2) is only specifically supported by two of the internal comparables (Library Clerks and Library Professionals).

C. Article VI and Article XI, Section D

Article VI and Article XI, Section D have, by all accounts, been in the parties' collective bargaining agreements for over 10 years. It was the Union that initially proposed changes to Article XI, Section D and to Article VI for the 2005-06 contract year. The City proposed in its final offer that these two contract provisions be eliminated from the parties' collective bargaining agreement (Union Exhibit 10, p. 4).

Fact-Finder Hill recommended "current contract" as to the City's Article VI and XI, Section D proposals because there was "no evidence that the present language has caused the parties problems or has otherwise become a burden to the Administration" (City Exhibit 14, p. 14; Union Exhibit 7, p. 14).

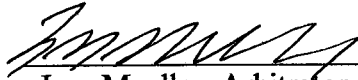
Iowa Administrative Code §621-6.3(2) provides that:

Arbitrators and fact finders shall rule on all issues submitted to them including the issue which is the subject of the negotiability dispute unless explicitly stayed by the board. Arbitration awards and fact finder's recommendations issued prior to the final determination of the negotiability dispute will be contingent upon that determination.

Although PERB has issued a preliminary ruling that Article VI and Article XI, Section D involve permissive subjects of bargaining, PERB has not yet made a final ruling. Since PERB has not issued a stay, the parties submitted evidence in support of their positions. This record and the factors of Iowa Code §20.22(9) don't support the City's proposal to eliminate the long-standing record retention language of Article XI, Section D and the work rule provision of Article VI. The Fact-Finder's *status quo* recommendation (as accepted by the Union) is the more reasonable of the available options. This determination is, however, subject to and contingent upon PERB's final decision on the permissive nature of Article VI and Article XI, Section D.

IV. Award

For the reasons set forth above, the Arbitrator selects the Fact-Finder's recommendations (City Exhibit 14, p. 14; Union Exhibit 7, p. 14) – as accepted by the Union – on the wages and insurance impasse items and on Article XI, Section D and Article VI.


Lon Moeller, Arbitrator

Dated at Iowa City, Iowa this
2nd day of March 2005

CERTIFICATE OF SERVICE

I certify that on the 2nd day of March, 2005, I served the foregoing arbitration award upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Frank Harty
Nyemaster, Goode, West, Hansell & O'Brien, P.C.
700 Walnut Street, Suite 1600
Des Moines, IA 50309

Mark T. Hedberg
Hedberg, Owens, Hedberg & Walsh
840 5th Avenue
Des Moines, IA 50309

I further certify that on the 2nd day of March, 2005, I will submit this interest arbitration award for filing by mail with the Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319-0203.


Lon Moeller, Arbitrator